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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTHA BANKS,

Plaintiff,

-v-

MICHAEL J. ASTRUE as Commissioner of Social
Security,¹

Defendant.

No. 06-CV-1428 (KMK)(GAY)

ORDER ADOPTING REPORT
AND RECOMMENDATION

KENNETH M. KARAS, District Judge:

Martha Banks ("Plaintiff") brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of Social Security's decision to deny her application for disability insurance benefits on the ground that Plaintiff was not disabled within the meaning of the Social Security Act. Now before this Court are the parties' cross-motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Judge Colleen McMahon, who was originally assigned to this case,² referred the case to Magistrate Judge George A. Yanthis. On May 28, 2008, Magistrate Judge Yanthis filed a Report and Recommendation ("R&R") recommending that this Court remand the case to the Commissioner of Social Security for further findings. (R&R 1.)

A district court reviewing a report and recommendation addressing a dispositive motion

¹ Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant for his predecessor in office, Jo Anne B. Barnhart, who had been named as defendant in Plaintiff's Complaint.

² The case was reassigned to the undersigned on August 6, 2007.

“may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), parties may submit objections to the magistrate judge’s report and recommendation. The objections must be “specific” and “written,” Fed. R. Civ. P. 72(b)(2), and must be made “[w]ithin 10 days after being served with a copy of the recommended disposition.” *Id.*; *see also* 28 U.S.C. § 636(b)(1).

Where a party submits timely objections to a report and recommendation, the district court reviews *de novo* the parts of the report and recommendation to which the party objected. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Donahue*, 2007 WL 831816, at *1. The district court “may adopt those portions of the . . . report [and recommendation] to which no ‘specific written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” *Eisenberg v. New Engl. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (quoting Fed. R. Civ. P. 72(b)(2)).

Here, neither party has filed objections to Magistrate Judge Yanthis’ R&R. Thus, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation dated May 28, 2008 is ADOPTED in its entirety. It is further

ORDERED that Plaintiff’s motion for judgment on the pleadings, to the extent it seeks


remand to the Commissioner for further proceedings, is GRANTED. It is further

ORDERED that the Commissioner's cross-motion on the pleadings is DENIED.

The Clerk of the Court is respectfully directed to terminate the pending motions (Dkt. Nos. 10, 15, 22) and close the case.

SO ORDERED.

Dated: August 13, 2009
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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